

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Revocation of the
License of David and Victoria
Brommerich to Provide Adult Foster
Care under Minnesota Rules, parts
9555.5105 to 9555.6265

**FINDINGS OF FACT, CONCLUSIONS
AND RECOMMENDATION**

The above matter came on for hearing before Administrative Law Judge M. Kevin Snell on July 13, 2010, at the Winona County Office Building, 202 West Third Street, Winona, Minnesota 55987. The OAH record closed at the end of the hearing on July 13, 2010.

Susan E. Cooper, Assistant Winona County Attorney, Winona County Courthouse, 171 West Third Street, Winona, Minnesota 55987, appeared on behalf of the Department of Human Services. David and Victoria Brommerich (the "Licensees") appeared on their own behalf without legal counsel.

STATEMENT OF THE ISSUES

1) Did Licensees fail to comply with the terms of an Order for Conditional License?

2) If Licensees failed to comply with the terms of an Order for Conditional License, did the nature, chronicity, or severity of the violations support revocation of Licensees' adult foster care license?

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Licensees have been licensed to provide vulnerable adult ("VA") foster care services for over twelve years. Licensees were first licensed in Winona County in 2003. Their current two-year license expired on July 1, 2010, and they are now under a provisional adult foster care license that allows them to

provide care for up to four VAs. Licensees were previously licensed in Olmstead County, Minnesota.¹

2. Licensees' home is located on West Broadway Street in Winona. It is well suited for adult foster care. It contains seven bedrooms and five bathrooms. VAs living in the home have a great deal of privacy. The home may also be the only licensed adult foster care home in Winona County that is wheelchair accessible.²

3. Victoria Brommerich is a registered nurse.³ David Brommerich owns a local real estate agency.⁴ Licensees have four children between the approximate ages of 5 and 10.⁵

4. Licensees post the telephone numbers of the local fire department, police department, and an emergency transportation service on a bulletin board. The bulletin board is located on the wall by the telephone in accordance with Minn. R. 9555.6225, Subp. 5., C.⁶

5. A June 17, 2004 licensing visit resulted in issuance of a correction order for the following licensing violations:

- a. Failure to maintain a fire extinguisher.
- b. Lack of a battery operated radio.
- c. Lack of documentation for vaccinations for a cat.
- d. Lack of documentation for 10 hours of training for each license holder.
- e. Lack of a signed copy of residents' rights in the residents' files.
- f. Lack of an abuse prevention plan in the residents' files.

Licensees did not return the June 17, 2004, correction order to the County.⁷

6. A June 28, 2006 re-licensing visit resulted in issuance of a correction order for the following licensing violations:

¹ Testimony of David Brommerich and Jennifer Stark, Adult Foster Care Case Aide for Winona County Department of Human Services.

² *Id.*, Ex. 3, pp. 18-20, 22, 25,

³ Test. of Victoria Brommerich.

⁴ Test. of D. Brommerich.

⁵ Ex. 3.

⁶ Test. of V. Brommerich.

⁷ Exs. 3, 4.

- a. Lack of documentation of fire drill logs.
- b. Lack of documentation of required training for each Licensee.
- c. Lack of documentation of physical examinations for two of their children.
- d. Lack of an updated Individual Abuse Prevention Plan for all residents.⁸

Licensees corrected the items, signed and returned the correction order to the County.⁹

7. In February 2007, VA1 was a resident in Licensees' home. VA1 was not a 24-hour-care resident and was independent enough that her Individual Service Plan ("ISP") provided that she could be left alone at home for up to four hours per day. VA1 had been walking unassisted to a weekday activity center ("DAC") in town for two and a half years prior to February 20, 2007.¹⁰

8. In order to get to the DAC from Licensees' home, VA1 had to cross West Broadway Street. West Broadway is heavily traveled by vehicular traffic.¹¹ On February 20, 2007, as VA1 was crossing West Broadway on her way to the DAC she was nearly hit by a truck.¹²

9. On February 22, 2007, VA1 was observed by her case manager crossing West Broadway without assistance.¹³

10. These two incidents were reported to the County.¹⁴

11. After the February 20 and 22, 2007 incidents, VA1's ISP was amended to require that VA1 be accompanied across West Broadway by a caregiver.¹⁵

12. During a February 28, 2007, licensing visit the County issued Licensees a correction order citing: violation of Minn. R. 9555.6175, Subp. 1 for allegedly not providing adequate supervision for VA1 and not reporting the two incidents; and violation of Minn. R. 9555.6195, Subp. 1 for allegedly not protecting VA1 from maltreatment. Licensee Victoria Brommerich signed and

⁸ *Id.*

⁹ Ex. 4.

¹⁰ Test. of D. Brommerich.

¹¹ *Id.*, Test. of J. Stark.

¹² *Id.*, Ex. 2.

¹³ Ex. 2.; Test of J. Stark.

¹⁴ Test. of J. Stark, Ex. 2.

¹⁵ Test. of J. Stark and D. Brommerich.

returned the February 28, 2007 correction order on March 6, 2007, agreeing to walk VA1 across the street.¹⁶

13. In addition to the correction order, on February 28, 2007, the County licenser gave Licensees a packet of information about VA training and a VA quiz.¹⁷ Licensees reviewed the VA law packet, took and completed the quiz, and agreed to call the County if anything happened regarding VA1.¹⁸

14. A maltreatment investigation was conducted as a result of the February 20 and 22, 2007 incidents. The finding of the investigation was inconclusive for maltreatment.¹⁹

15. Licensees, usually David Brommerich, accompanied VA1 across West Broadway after amendment of her ISP. This procedure was followed every day that VA1 went to the DAC from February 28, 2007 until October 2, 2007.²⁰

16. The County issued a correction order to Licensees on July 12, 2007 for incomplete documentation on a resident, lack of a physical examination on file and lack of a signed authorization for the administration of medications. The correction order was signed and returned, but the County's licensing file lacked documentation of the corrections.²¹

17. In the fall of 2007, Licensee David Brommerich would take 15 minutes to drive his son to school on Monday, Wednesday and Friday mornings. His son's classes started at 8:45 a.m. Upon his return from dropping off his son, Mr. Brommerich would walk VA1 across West Broadway.²²

18. On October 2, 2007, during the 15 minutes Mr. Brommerich was taking his son to school, VA1 became anxious and walked across West Broadway and went to the DAC without waiting for Mr. Brommerich to return. Upon returning home and learning that VA1 had left on her own, Mr. Brommerich immediately called the County licenser and reported this fact.²³

19. A maltreatment investigation was conducted as a result of the October 2, 2007 incident. The finding of the investigation was inconclusive for maltreatment.²⁴

20. On a Friday sometime between October 2, 2007 and October 27, 2007, the Winona County Public Health Department placed VA2 with Licensees.

¹⁶ Ex. 2; Test. of J. Stark.

¹⁷ *Id.*

¹⁸ Ex. 2.; Test. of D. and V. Brommerich.

¹⁹ Test. of J. Stark, Ex. 2.

²⁰ Test. of D. Brommerich, Exs. 2 and 3.

²¹ Exs. 3, 4. The record does not include a copy of this correction order.

²² Test. of D. Brommerich.

²³ *Id.*

²⁴ Test. of J. Stark, Ex. 2.

VA2 is a registered sex offender. The following, Monday Licensees notified the County of the placement. VA2 required a great deal of care and left Licensees care after having been with them for seven days.²⁵

21. Licensees mistakenly believed that the County Public Health Department communicated with the County Human Services Department prior to VA2's placement with Licensees.²⁶

22. The County and VA1's guardian removed VA1 from Licensees' home On October 27, 2007. Licensees' other residents were removed by the County soon thereafter.²⁷ The Licensees' were directed by the County not to contact or talk to the removed residents.²⁸

23. As a result of a visit by the County on November 19, 2007, that day the County issued a correction order to Licensees alleging the following violations:

- a. Lack of a mobility assessment on a wheelchair resident in violation of Minn. R. 9555.5605, Subp. B2; and
- b. Failure to notify the County when a new resident moved in violation of Minn. R. 9555.6125, Subp. B2; and
- c. Lack of a signed authorization to administer medications for a new resident in violation of Minn. R. 9555.6225, Subp. 8B; and
- d. Failure to give a new resident a copy of resident's rights in violation of Minn. R. 9555.6255, Subp. 1.²⁹

24. Minnesota Rule 9555.5605 contains no Subpart B2. Minnesota Rule 9555.6125 contains no Subpart B2.³⁰

25. Licensees corrected the items, signed and returned the November 19, 2007 correction order to the County.³¹

26. On November 27, 2007, the County recommended to the Department that Licensees be placed on a conditional license for one year, citing: uncompleted correction orders from 2004 and 2006; the October 2, 2007,

²⁵ Test. of J. Stark and D. and V. Brommerich; Ex.3.

²⁶ Test. of J. Stark and D. and V. Brommerich.

²⁷ Ex. 3; Test. of J. Stark.

²⁸ Test. D. and V. Brommerich.

²⁹ Ex. 3. The record does not include a copy of this correction order.

³⁰ See, Minn. R. 9555.5605 and 9555.6125.

³¹ Ex. 3; Test. D. and V. Brommerich.

incident involving VA1; the November 19, 2009 correction order; and alleging that Licensees' Adult Foster Home Program was not up to date.³²

27. As a result of a visit by the County on June 30, 2008, that day the County issued a correction order to Licensees alleging the following violations:

- a. Lack of mild liquid soap and thermometers in a first aid kit.
- b. Lack of rabies vaccination records for two pet cats.
- c. Lack of physician reports for Licensees and two children.
- d. Lack of date of discharge, forwarding address, and reason for discharge for a resident.
- e. Lack of chart of administration of resident medications.
- f. Lack of a battery for a smoke detector in a basement room.

Licensees corrected items a, e, and f on July 1, 2008, item d on July 14, and item b on July 15, 2008. Victoria Brommerich signed and returned the correction order to the County on July 18, 2008.³³

28. The Department issued an Order of Conditional License to Licensees on August 26, 2008. The Order contained the following conditions:

1. You follow and comply with all applicable Minnesota Rules and Laws.
2. No variances will be granted during the conditional period.
3. Prior to accepting a resident for placement you must obtain written approval from a Winona County Human Services licensing worker and the resident's placement worker.
4. For each new resident, you must review and update your Adult Foster Care Program Plan in conjunction with the resident's individual plans. You must submit the update Adult Foster Care Program Plan to Winona County Human Services for approval within 5 days of accepting each new resident.
5. You must submit physician's reports on caregivers and household members at least once every five years to Winona County.

³² Ex. 3.

³³ Ex. 10.

6. You must either provide a copy of the Order of Conditional License to residents and/or their legal guardians or document that each resident and/or their legal guardian has been given an opportunity to review the Order of Conditional License. You must obtain each resident or legal guardian's signature for each resident currently in care, verifying they have either received a copy of the conditional order or had an opportunity to review the conditional order. You must provide this documentation to Winona County Department of Human Services **by September 12, 2008**. For new residents, you must submit documentation of compliance with this term to Winona County Department of Human Services within **5 days of any resident's admission** to your adult foster care program.³⁴
29. Licensees have not had a resident in their care since October 2008.³⁵
30. Licensees post the telephone numbers of the local fire department, police department, and an emergency transportation service on a bulletin board. When VAs are living in the home the bulletin board is located on the wall by the telephone. When no VAs are in residence, Licensees take the bulletin board down.³⁶
31. Licensees were advised by a County licensor that they would receive credit for one hour of VA training annually by rereading and initialing the VA rules and book, write the date and initial at the top.³⁷
32. The County issued Licensees a correction order on February 23, 2009 for not providing the County with proof of annual VA training as required by Minn. R. 9555.6185, Subp. 2. Licensees did not sign and return the correction order.³⁸
33. The County issued Licensees a correction order on April 17, 2009 for not complying with the February 23, 2009 correction order as required by Minn. Stat. 245A.06, Subp. 3. Licensees did not sign and return the correction order.³⁹
34. A County licensor visited Licensee's home on July 10, 2009. As a result of that visit the County issued Licensees a correction order citing the following violations:

³⁴ Ex. 4.

³⁵ Ex. 10; Test. of D. and V. Brommerich.

³⁶ Ex. 2.

³⁷ Test. of V. Brommerich.

³⁸ Ex. 7.

³⁹ Ex. 7.

- a. A battery powered flashlight not in working order, in violation of Minn. R. 9555.6125, Subp. 2.
- b. Emergency telephone numbers not posted as required by Minn. R. 9555.6125, Subp. 2.
- c. Emergency procedures not posted as required by Minn. R. 9555.6125, Subp. 2.
- d. Lack of unlocking devices for upstairs bedrooms/bathroom as required by Minn. R. 9555.6125, Subp. 2.
- e. Lack of carbon monoxide detectors for bedrooms as required by Minn. R. 9555.6125, Subp. 2.
- f. Lack of required annual training as required by Minn. R. 9555.6185, Subp. 2B.
- g. Lack of records of past resident's discharge date, forwarding address, and reason for discharge as required by Minn. R. 9555.6245, Subp. 10.
- h. Lack of record of vaccinations for two cats and one dog as required by Minn. R. 9555.6225, Subp. 7.
- i. Failure to comply with the correction orders of February 23, 2009 and April 17, 2009.⁴⁰

35. The July 10, 2009 correction order specified that it must be signed and returned by August 3, 2009, together with explanations of how the violations have been corrected. Licensees did not sign or return the correction order.⁴¹

36. On July 29, 2009, the County sent a letter to the Department requesting that the Order of Conditional license be extended for another year.⁴²

37. The Department issued an Order of Conditional License to Licensees on October 27, 2009. The Order contained the same first four and the last condition as in the August 26, 2008, conditional license. It did not contain condition number 5 from the August 28, 2008, conditional license. It contained the following two new conditions:

5. You must complete Reporting of Maltreatment of Vulnerable Adult training by November 15, 2009, and annually thereafter. The training must be completed in-person and must be provided through Winona County Human Services

⁴⁰ Ex. 9.

⁴¹ *Id.*

⁴² Ex. 10.

or through another agency. If this training is obtained through another agency, prior approval to attend this training must be granted by Winona County Human Services. You must submit documentation that you have each completed the training to Winona County Human Services.

6. You must each complete any outstanding required training hours by January 31, 2010. These are the annual training requirements as listed in Minnesota Rules, part 9555.6185, and Minnesota Statutes, Chapter 245A. Prior to attending training, you must obtain approval from Winona County Human Services that the training is appropriate. You must submit documentation of your attendance to Winona County Human Services.⁴³

38. The County notified Licensees on November 2, 2009 that it had arranged VA training to be held on November 12, 2009 that would satisfy condition number five of the conditional license. Licensees sent the County licenser an e-mail on November 3, 2009 stating that they would be attending the November 12, 2009 training. They did not attend the training and did not seek training from any other agencies.⁴⁴ Licensees did not explain why they did not attend the November training.

39. The County is aware to Licensees' desire of continue to operate a licensed adult foster care home.⁴⁵

40. On February 12, 2010, Licensee Victoria Brommerich completed the Standard First Aid course provided by Winona County.⁴⁶

41. On July 12, 2010, Licensee David Brommerich completed seven hours of training provided by Winona County, including the following four modules of First Aid Course Curriculum: Adult First Aid; Environmental Emergencies; Adult/Child CPR With Mask; and Adult/Child AED.⁴⁷

Procedural Findings

42. On November 16, 2008, the County sent the Department a letter recommending that the adult foster care license of Licensees be revoked because of their failure to comply with conditions five and six of the October 27, 2009 Order of Conditional License.⁴⁸

⁴³ Ex. 11.

⁴⁴ Ex. 12, Attachment B; Test. of J. Stark and D. Brommerich.

⁴⁵ Test. of J. Stark.

⁴⁶ Ex. 16.

⁴⁷ Ex. 16; Test. of D. Brommerich.

⁴⁸ Ex. 12.

43. On November 16, 2009, the County sent a letter to the Licensees' advising them that it was recommending to the Department that adverse action be taken against their adult foster care license.⁴⁹

44. On April 23, 2010, the Department issued its Order of Revocation of Licensees' adult foster care license. The Order of Revocation is based upon Licensees' failure to comply with conditions five and six of the October 27, 2009 Order of Conditional License.⁵⁰

45. Licensees filed a timely appeal of the Order of Revocation and requested a hearing.⁵¹

46. On May 13, 2010, the Department issued a Notice of and Order for Hearing in this matter, and this contested case proceeding ensued.⁵²

47. On June 8, 2010, an Administrative Law Judge issued a Protective Order, which was served upon the parties by mail.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Human Services are authorized to consider the appeal of maltreatment and revocation of adult foster care license decisions, pursuant to Minn. Stat. §§ 245A.07, subd. 3(a), 245A. 08, subd. 1, and 14.50.

2. Minn. Stat. § 245A.07, subd. 3, allows the Commissioner to suspend or revoke a license, or impose a fine if a license holder fails to comply with the applicable laws or rules. Notice of any such action must be given by certified mail and must state the reasons for the sanction.

3. The Department gave proper notice of the hearing, and all relevant substantive and procedural requirements of law or rule have been fulfilled.

4. Under Minn. Stat. § 245A.08, subd. 3, the burden of proof first lies with the Department, who may demonstrate reasonable cause for the action taken by submitting statements, reports, or affidavits to substantiate the allegations that the license holder failed to comply fully with applicable law or rule. If the Department demonstrates that reasonable cause existed, the burden shifts to the license holders to demonstrate by a preponderance of the evidence that they

⁴⁹ Ex. 13.

⁵⁰ Ex. 14.

⁵¹ Ex. 15.

⁵² Notice of and Order for Hearing.

were in full compliance with those laws or rules allegedly violated, at the time that the Department alleges the violations occurred.

5. Minn. R. 9555.6175, subp. 1 provides:

The operator shall ensure that residents are protected from maltreatment through compliance with the Vulnerable Adults Act.

6. The Department has failed to establish reasonable cause to believe that Licensees were in violation of Minn. R. 9555.6175 when resident VA1 crossed West Broadway in February and October 2007.

7. Minn. R. 9555.6125 provides in applicable part:

Subp. 12. Change in license terms. The following shall apply to changes in the terms of licensure: . . .

B. The operator must notify the commissioner and the studies in part 9555.6125 must be completed: . . .

(2) when there is an addition of any adult or child who is or will be a roomer, resident, household member, or caregiver;

8. Subpart 3 of Minn. R. 9555.6175 requires that adult foster care licensees report to the local agency any change in the regular membership of the household within five calendar days.

9. Minn. R. 9555.5105 specifies the applicable definitions as follows:

...

Subp. 16. Household member. "Household member" means any person living in the adult foster home more than 30 consecutive calendar days in any 12 month period who is not a resident.

...

Subp. 32. Resident. "Resident" means a functionally impaired adult residing in an adult foster home and receiving foster care.

10. Because VA2 was a resident and not a household member, the Department has failed to establish reasonable cause to believe that Licensees were in violation of either Minn. R. 9555.6125 or Minn. R. 9555.6175 by accepting resident VA2 in October 2007.

11. Minn. R. 9555.6185, regarding foster care training, provides in applicable part as follows:

Subp. 2. Training requirements. In addition to the orientation training, caregivers must complete the training designed to meet the needs of the residents in care in any of the subject areas and in the amount specified in subpart 4. The operator must ensure that a record of training completed is maintained.

B. Caregivers with six or more years of licensure or experience as an adult foster home caregiver must complete six hours training a year.

Subp. 4. Training subjects. Training subjects shall be selected from the following areas:

...

AA. other areas that the local agency documents as relevant to adult foster care.

12. The Department has established reasonable cause to believe that, Licensees failed to complete VA training required by the County in 2009, in violation of Minn. R. 9555.6185. Licensees has failed to demonstrate by a preponderance of the evidence that they completed and documented training required for 2009, in violation of Minn. R. 9555.6185.

13. Minn. Stat. 245A, subd. 3 regarding correction orders and conditional licenses provides, in applicable part:

If the commissioner finds that the applicant or license holder has not corrected the violations specified in the correction order or conditional license, the commissioner may impose a fine and order other licensing sanctions pursuant to section 245A.07.

14. The Department has established reasonable cause to believe that Licensees failed to comply with conditions five and six of the October 27, 2009 Order of Conditional License. Licensees have failed to demonstrate by a preponderance of the evidence that they complied with conditions five and six of the October 27, 2009 Order of Conditional License, in violation of Minn. Stat. 245A, subd. 3.

15. The Licensees have failed to demonstrate by a preponderance of the evidence that they were at all times in full compliance with the rules and statutes governing their foster care license.

16. Minn. Stat. § 245A.07, subd. 1, requires the Commissioner to consider “the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights” of those persons in a licensee’s program before applying sanctions under Minn. Stat. § 245A.07.

17. The Department has shown that the decision to revoke the license took into account “the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program,” and “the facts, conditions or circumstances concerning the program’s operation, the well-being of persons served by the program” as required by Minn. Stat. §§ 245A.04, subd. 6 and 245A.07, subd. 1.

18. The Department has not shown that the decision to revoke the license took into account “available consumer evaluations of the program...,” as required by Minn. Stat. §§ 245A.04, subd. 6 and 245A.07, subd. 1.

19. These Conclusions are reached for the reasons set forth in the Memorandum below, which is hereby incorporated by reference into these Conclusions.

20. The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions, and as Findings any Conclusions that are more appropriately described as Findings.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

Based upon these Conclusions, the Administrative Law Judge recommends to the Commissioner of Human Services that the Order of Revocation be RESCINDED:

Dated: July 30, 2010

/s/ M. Kevin Snell

M. Kevin Snell
Administrative Law Judge

Reported: Digitally recorded; no transcript prepared.

NOTICES

This report is a recommendation, not a final decision. The Commissioner of Human Services will issue a final decision after reviewing the administrative record, and he may adopt, reject or modify the Administrative Law Judge's Findings of Fact, Conclusions, and Recommendations. The parties have 10 calendar days after receiving this recommended decision in which to file any exceptions to the report with the Commissioner.⁵³ Parties should contact the office of Cal Ludeman, Commissioner of Human Services, Box 64998, St. Paul MN 55155, (651)431-2907 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minnesota law, the Commissioner of Human Services is required to serve his final decision upon each party and the Administrative Law Judge by first class mail.

MEMORANDUM

The Administrative Law Judge has determined that Licensees did violate the terms of their conditional license. The challenging determination to be made in this matter is the appropriate sanction for the violations.

Minn. Stat. §§ 245A.04, subd. 6 and 245A.07, subd. 1 requires the Commissioner to consider "the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights" of those persons in a licensee's program before applying sanctions under Minn. Stat. § 245A.07. The record in this matter does not indicate that the Department considered available consumer evaluations of the program. For the reasons stated below, the Administrative Law Judge has determined that sanctions less than revocation are appropriate in this matter.

Licensing History Prior to 2009

The record in this matter leaves much to be desired. Material factual information necessary to make thoughtful, informed decisions at each level was not presented to the Administrative Law Judge.

⁵³ Minn. Stat. § 14.61.

First, the County relied on a June 17, 2004 correction order in its various recommendations to the Department. The record does not include a copy of this correction order. It appears from the record regarding the June 17, 2004 correction order that the only violation indicating chronicity is a lack of documentation of training for the Licensees. The remainder of the items appear to have been corrected. Because the remaining items are over six years old, they are not relevant

Second, the County relied on a July 12, 2007 correction order in its various recommendations to the Department. The record does not include a copy of this correction order. Neither the County's November 27, 2007 recommendation for a conditional license nor its August 26, 2008 recommendation for a continued conditional license specifies whether each of these alleged violations relate to a single VA, or whether there were single violations for multiple VAs. Although the record is not entirely clear, it appears that the violations listed were corrected and the correction order was signed and returned to the County.

Third, the County relied on a November 19, 2007 correction order in its various recommendations to the Department. The record does not include a copy of this correction order or specify for what alleged violation(s) it was issued. The County's November 27, 2007 recommendation for a conditional license refers to some violations. However, it does not tie the alleged violations to individual VAs. This equation is material. The violations alleged may or may not relate to VA2, the registered sex offender. Is VA2 or (an)other resident(s): the resident in the wheelchair lacking a mobility assessment; the resident lacking the signed authorization for administration of medications; the resident lacking documentation of receipt of residents' rights?

Fourth, material information regarding VA2, the registered sex offender, is lacking. VA2 appears to have been the catalyst that soured the relationship between the County and the Licensees. The Administrative Law Judge has concluded that Licensees did not violate Minn. R. 9555.6125, Subp. 12 B(2) by notifying the County licenser one working day after VA2s placement. There is no requirement in the statutes or rules that an adult foster care licensee notify the County licenser prior to acceptance of a resident placed in the home by the County Health Department. The reasonableness of the concern generated by the County over the brief placement of VA2 with Licensees cannot be determined by the record in this case. For example, is VA2 a level 1 sex offender and the resident confined to a wheelchair, is he a fully mobile level 3 offender, or something in between? The answers to those questions would determine the reasonableness of the County's reaction to VA2s placement and subsequent removal of all of Licensees' residents.⁵⁴ Also, the County, in its letter

⁵⁴ The Minnesota Community Notification Act requires that offenders who meet the definition of "predatory offenders" must register as such with their assigned corrections agents. Minn. Stat. §

recommending Licensees' first conditional license states that VA2 is "an untreated sex offender." The Administrative Law Judge questions whether or not this statement is accurate because such information is private, non-public information.⁵⁵

Fifth, the Administrative Law Judge concludes, based on the testimony of the County licensor and the Licensees, that the allegations of inadequate supervision of VA1 in February and October of 2007 are not supported by a preponderance of the evidence. The County licensor who testified appeared somewhat unfamiliar with the Licensees' file and the facts of this case. The primary licensor for Licensees is on maternity leave. However, the licensor that did verify that VA1's ISP did not require Licensees' to accompany her across the street until it was amended after the February incidents. The Licensees followed a successful routine for over seven months before the October 2, 2007 incident when VA1 decided not to wait for Mr. Brommerich to return home before she crossed West Broadway unaccompanied. Mr. Brommerich self reported this incident as Licensees had agreed, in writing, to do in response to the February 28, 2007 correction order. VA1's behavior on October 2, 2007 was unforeseeable.

Substantiated and Chronic Licensing Violations

The single licensing issue indicating chronicity of violations by Licensees is the annual training requirements. This first appears relative to the June 17, 2004 correction order. This training issue reappears two years later relative to the June 28, 2006 correction order. Although the record is not entirely clear, it appears that the violations listed in the 2006 correction order were corrected, the training completed, and the correction order was signed and returned to the County. The documentation of training issue appears approximately two and half years later relative to the February 23, 2009 correction order and continued with

243.166. The law further requires that prior to their release from incarceration, offenders required to register as predatory offenders must be assessed by the facility's End of Confinement Review Committee for the risk that they will commit a sexual offense after they are released. *Id.*; Minn. Stat. § 244.052. The assigned risk level determines the type of notice local law enforcement must give to the public about the sex offender's presence in the community. Risk Level 1 offenders present the lowest public risk. Risk Level 1 disclosure is given to other law enforcement agencies and victims of or witnesses to the offense. Risk Level 2 offenders present a modest public risk. Risk Level 2 requires additional notice to agencies and groups such as schools, day care businesses and others caring for persons likely to be victimized by the offender. Risk Level 3 offenders present the highest public risk. Risk Level 3 requires that the agency disclose the information to the above persons and entities and to other members of the community whom the offender is likely to encounter, unless the law enforcement agency determines that public safety would be compromised by the disclosure or that a more limited disclosure is necessary to protect the identity of the victim. Minn. Stat. § 244.052, subd. 4. The offender must register as a sex offender and must maintain his registration for a minimum of ten years. Throughout this time, the appropriate level of notice must be given every time the offender moves. Minn. Stat. § 243.166, subd. 6.

⁵⁵ Minn. Stat. §§ 13.42, 13.85, 144.335, and 609.3452.

the July 28, 2009 correction order. This 2009 continuing violation resulted in addition of conditions five and six to Licensees' conditional license of October 27, 2009 that are the subject matter of this proceeding.

The Administrative Law Judge concludes that while the training and documentation violations were recently chronic, they are not of a nature or serious enough that revocation is necessary to protect the well being of future foster care vulnerable adults in Licensees' care.

Licensees' VA training shortcomings are largely unexplained, except for the fact that Licensees have had no residents since late 2008. The testimony suggests that Licensees didn't think attention to the training and the July 28, 2009 correction order was necessary unless they had residents. This attitude is problematic because, as currently licensed, residents could be placed with Licensees at any time. Licensees need up to date training and their home has to be fully compliant before residents are placed there.

However, there is insufficient evidence to conclude that there is a serious or chronic problem with the Licensees' direct care of residents. The evidence in the record of the overall history of Licensees' licensing violations suggests that they have been routine, non-recurring documentation issues and residence physical problems that have been corrected. Consideration should be given to the benefit of having a registered nurse caring for VAs in a home well suited for adult foster care purposes. The record in this matter does not support revocation. The Administrative Law Judge respectfully suggests that the Commissioner impose an appropriate fine and an indefinite suspension until Licensee's correct the physical measures specified in the July 28, 2009 correction order; complete all required documentation; and bring their VA training current.

For all of these reasons, the Administrative Law Judge recommends that the revocation of the Licensees' adult foster care license of be rescinded.

M. K. S.